

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10239 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DHIRUBHAI NAGJIBHAI GONDALIYA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 10239 of 2001
MS RUKHSANA M PATHAN for Petitioner No. 1
MR SS PATEL, AGP, for Respondents No. 1-3
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/01/2002

ORAL JUDGEMENT

1. The petitioner has been detained by an order
passed by the Commissioner of Police, Surat City, Surat,
on the May 2, 2001, in exercise of powers under Section

3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short).

2. The detaining authority took into consideration three offences registered against the petitioner, so also the statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as that of a dangerous person and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Ms. Pathan, learned advocate appearing for the petitioner, contended that a representation was made on the October 29, 2001, which was received by the detaining authority on November 2, 2001. The detaining authority forwarded the representation to the Government on November 3, 2001 and the same was received by the Government on November 6, 2001. However, the representation was decided by the Government only on December 12, 2001. The delay in deciding the representation has affected the right of the detenu of making an effective representation and, therefore, the continued detention is vitiated. She, therefore, urged that the petition may be allowed and the order of detention may be quashed and set aside.

4. Mr. Patel, learned Assistant Government Pleader, has opposed this petition. He contended that the representation had gone to some other department and, therefore, the delay. He, therefore, urged that the petition may be dismissed.

5. Having regard to rival side contentions, petition deserves to be allowed on the ground that there is delay in considering the representation of the detenu. Though the learned Assistant Government Pleader has contended that the delay had occasioned in deciding the representation as the representation had gone to some other department, yet no such delay is explained as to where and when the representation had travelled. The fact remains that a representation of October 29, 2001 received by the Government on November 6, 2001 was decided on December 12, 2001. This abnormal delay would result into infringement of right of the detenu of making an effective representation. Therefore, the continued detention would be vitiated as held by this Court in the

case of Anubhai M. Jani v. State of Gujarat, 2000(3) GLR 649. The petition, therefore, deserves to be allowed.

6. In the result, the petition is allowed. The impugned order of detention dated the 2nd May, 2001, passed against the detenu is hereby quashed. The detenu-Dhirubhai Nagjibhai Gondalia is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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